IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1053 OF 2000

KIRAN N. DIDDI .. APPLICANT

V/S

RAVINDRA N. DIDDI & ORS. ..OPPONENTS

PARAG SHELKE FOR APPLICANT.

P.M. SHAH FOR RESP. NO. 2.

DHANANJAY LONKAR FOR RESP. NO. 6.

CORAM : D.G. KARNIK, J.

DATE : 31ST AUGUST,2006.

P.C.

This Revision Application is directed against the order passed below Exh. 49 in Spl. Execution Petition No. 94/96 by the Jt. Civil Judge, Senior Division, Solapur.

2. The Applicant filed a suit, bearing Suit No. 54 of 1986, against the Respondent for partition and separate possession of his share in the suit properties. The trial court passed a preliminary decree holding that the revision Applicant was

entitled to 8/35 share in the property and directed that in so far as the decree related to the agricultural lands it be sent to the Collector for a partition in accordance with the provisions of section 54 of Code of Civil Procedure. So far as the partition of the other properties are concerned, the court ordered that the preliminary decree be drawn for effecting partition by metes and bounds.

3. After passing of the decree the Respondent No. 1 and 2 herein, who are held to be entitled to share in the suit property, filed execution proceeding before the drawing up of the final decree. In effect they sought execution of the preliminary decree. The revision applicant objected to the execution petition contending that the preliminary decree could not be executed and only after the final decree was drawn determining rights of the parties and dividing the suit properties by metes and bounds. The trial cour that excution proceedings could be filed. The trial court overruled the said objection by an

order dated 6th September, 1999. That order is impugned in this revision application.

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4. In Shankar Balwant Lokhande v/s. Chandrakant Shankar Lokhande & Anr. reported in (1995) 3 Supreme Court Cases 413 the Supreme Court has held that the executing court cannot execute the preliminary decree unless the final decree is passed.In view of this decision cited at the bar, learned counsel for the Respondents seeks leave to withdraw the execution proceedings, filed by them in the trial court. Learned counsel for the revision applicant has no objection for permission being granted to the Respondent No. 1 for withdrawal of the Execution petition. Accordingly the Respondent No. 1 and 2 is permitted to withdraw the Special Execution petition (Spl.Darkhast) No. 94 of 1996 filed by them in the court of Civil Judge, Senior Division, Solapur. Special Darkhast No. 94 of 1996 accordingly stands disposed of as withdrawn.

5. In view of this Civil Revision Application does not survive and is disposed of.

(D.G. KARNIK, J.)